



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sea Containers America, Inc.--Reconsideration
File: B-227061.3
Date: January 28, 1988

DIGEST

Dismissal of protest for failure to file a copy with the contracting agency within 1 day after filing with the General Accounting Office is affirmed since mailing a copy, as protester contends it did, does not satisfy requirement for actual receipt of copy of protest by contracting agency within 1 day. Failure to provide copy of protest will not be waived simply because of additional effort necessary to meet requirement when protest involves contracting activity located overseas.

DECISION

Sea Containers America, Inc. requests reconsideration of our dismissal of its protest concerning solicitation No. F61546-86-R-0188, issued by the Department of the Air Force. We dismissed the protest because Sea Containers failed to promptly furnish a copy of the protest to the contracting activity. We affirm the dismissal.

The protest was filed by Sea Containers with the General Accounting Office on November 18, 1987, on behalf of its affiliate company which is the bidder of record, Yorkshire Marine Containers, Ltd., located in Beverly, Yorkshire England. On November 30, 1987, 11 calendar days and 6 working days after November 19, the date our regulations require that the contracting officer receive his copy of the protest, the Air Force advised us that the contracting officer in West Germany had not yet received a copy of the protest. Our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1987), explicitly require that a protester furnish a copy

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of any protest filed with our Office to the contracting agency within 1 working day after the protest is filed. As a result, we dismissed the protest.

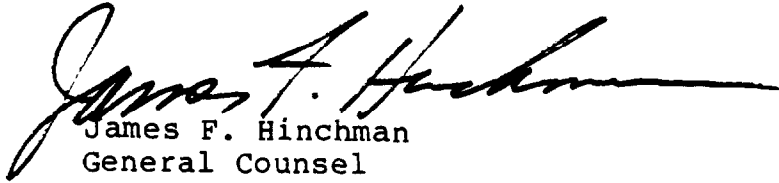
The notice requirement stems from the requirement in the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(b)(2)(A) (Supp. III 1985), that the contracting agency file a written report with our Office within 25 working days after we notify the agency of the protest. Any delay in furnishing a copy of the protest to the contracting agency not only hampers the agency's ability to meet the 25-day statutory deadline, but also frustrates our efforts to consider all objections to agency procurement actions in as timely a fashion as possible. Refac Electronics Corp.--Reconsideration, B-226034.2, Feb. 4, 1987, 87-1 CPD ¶ 117. Sea Containers argues, however, that its protest should not have been dismissed for failure to satisfy the 1-day notice requirement, because the location of the contracting activity in West Germany has resulted in a series of difficulties in communicating with the activity rendering the 1-day time limit for receipt in West Germany unreasonable.

While the location of the contracting activity may require an additional effort on an American-based firm's part to meet the notice requirement, we believe that it is the protester's responsibility to take potential mailing difficulties into account when filing a protest involving an overseas procurement. While we have relaxed the requirement in appropriate circumstances, we see no basis to routinely waive the notice requirement in all such cases, since the purpose of the requirement--to ensure timely consideration of protests within the statutory deadlines--outweighs any alleged burden to the protester. Development Management Systems, Inc.--Reconsideration, B-227823.2, et al., July 24, 1987, 87-2 CPD ¶ 88. In any event, we point out that here we did not dismiss the protest until 11 calendar days after the date by which the contracting activity should have received a copy of the protest. We also note that to avoid the overseas transmittal difficulties, Sea Containers could have relied on Yorkshire Marine Containers, Ltd., located in Great Britain, to arrange for the delivery and receipt of a copy of the protest to the contracting activity in West Germany within the required time period.

Sea Containers asserts that it sent a copy of its protest to the contracting officer at Lindsev Air Station, Wiesbaden, West Germany on November 18, 1987, the date the protest was filed. The fact that the protester may have mailed a copy within the necessary period is not relevant since the regulatory requirement is for receipt by, rather than transmission to, the agency within 1 working day of filing.

Canvas & Leather Bag Co., Inc., B-227889.2, July 24, 1987,
87-2 CPD ¶ 89.

Our prior dismissal is affirmed.


James F. Hinchman
General Counsel